

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA,

Plaintiff,

v.

HUDSON SAND AND GRAVEL, INC.,
BALLINGER PROPERTIES, L.L.C.,
FIVE N ASSOCIATES, and
TANA PROPERTIES LIMITED PARTNERSHIP,

Defendants.

CIVIL ACTION NO.

CONSENT DECREE

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CONSENT DECREE

WHEREAS, Plaintiff, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed a complaint (the "Complaint") alleging that Defendants, Hudson Sand and Gravel, Inc., Ballinger Properties, L.L.C., Five N Associates, and TANA Properties Limited Partnership (collectively, the "Settling Parties") violated Sections 301 and 308 of the Clean Water Act (the "Act"), 33 U.S.C. §§ 1311 and 1318;

WHEREAS, the Complaint alleges that Settling Parties own and/or operate property located off Pettingill Road, in the Town of Londonderry, New Hampshire, that serves primarily as a sand and gravel mining operation, including the following land parcels (as represented on Town of Londonderry Tax Assessment Maps): 14-34-0; 14-35-0; 14-36-0; 14-45-0; 14-45-2; 14-46-0; 28-17-0; 28-17-3; 28-17-4; 28-18-3; 28-18-5; and 28-18-7 (collectively, the "Property");

WHEREAS, the Complaint alleges that, in violation of Sections 301 and 308 of the Act, 33 U.S.C. §§ 1311 and 1318, the Settling Parties discharged "storm water associated with industrial activity" from various point sources into waters of the United States from the Property without a National Pollutant Discharge Elimination System ("NPDES") permit and that the Settling Parties failed to apply for a NPDES permit for such discharges;

WHEREAS, the Complaint also alleges that the Settling Parties discharged pollutants into waters of the United States that was not authorized by a permit issued by the United States Army Corps of Engineers pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a); and

WHEREAS, the parties agree, without adjudication or admission of facts or law, that settlement of this matter is in the public interest and that entry of this Consent Decree without

further litigation is an appropriate resolution of the dispute, and the parties consent to the entry of this Consent Decree;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication or admission of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered, adjudged, and decreed as follows:

I. STATEMENT OF CLAIM

1. The Complaint filed in this action states claims upon which relief can be granted against the Settling Parties pursuant to Section 309 of the Act, 33 U.S.C. § 1319. For purposes of this Consent Decree, Settling Parties agree that the Complaint states a claim upon which relief may be granted pursuant to Section 309 of the Act, 33 U.S.C. § 1319.

II. JURISDICTION AND VENUE

2. The Court has jurisdiction over the subject matter of this action and over the parties to this Consent Decree pursuant to Section 309(b) of the Act, 33 U.S.C. §§ 1319(b), and 28 U.S.C. §§ 1331, 1345 and 1355. Venue properly lies in this district pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391 and 1395. For purposes of this Consent Decree, or any action to enforce the Consent Decree, Settling Parties consent to the Court's jurisdiction over this Decree or such action and over Settling Parties and consents to venue in this judicial district.

III. APPLICABILITY

3. The provisions of this Consent Decree shall apply to and be binding upon the United States, and shall also apply to and be binding upon the Settling Parties, jointly and severally, and their respective officers, directors, partners, agents, employees acting in their

official capacities, successors, and assigns. The Settling Parties shall give notice and a true copy of this Consent Decree to all persons, firms, consultants, and corporations that perform the work or any portion of the work required by this Consent Decree. The Settling Parties shall also give notice and a true copy of this Consent Decree to all successors in interest prior to any transfer of ownership or other operational interest in all or part of the Property or its operations.

Simultaneously with such notice, the Settling Parties shall notify, in writing, EPA Region I and the United States Department of Justice, in the manner provided in Section XIV of this Consent Decree, of such succession in interest and that such notice and copy has been given by the Settling Parties. In the event of transfer of ownership or other operational interest in the Property, the Settling Parties shall not be released from the obligations or liability under this Consent Decree unless the Plaintiff agrees in writing.

IV. OBJECTIVES

4. It is the express purpose of the parties in entering into this Consent Decree to further the goals of the Act, as enunciated at Section 101 of the Act, 33 U.S.C. § 1251. Any and all provisions herein relating to operation and maintenance, monitoring, reporting, and inspections shall have the objective of ensuring full compliance with the Act, the regulations promulgated pursuant to the Act, and the terms of any permit issued under the Act.

V. DEFINITIONS

5. Terms used in this Consent Decree that are defined in the Act or in regulations promulgated pursuant to the Act shall have the meanings assigned to them in the Act or such regulations, unless otherwise provided in this Decree. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

“Complaint” shall mean the complaint filed by the United States in this action;

"Consent Decree" or "Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXII);

"Corps" shall mean the United States Army Corps of Engineers and any successor departments or agencies of the United States;

"Day" shall mean a calendar day unless expressly stated to be a working day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day;

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

"Interest" shall mean interest at the rate determined pursuant to 28 U.S.C. § 1961.

"Paragraph" shall mean a portion of this Decree identified by an arabic numeral;

"Parties" shall mean the United States and Defendants Hudson Sand and Gravel, Inc., Ballinger Properties, L.L.C., Five N Associates, and TANA Properties Limited Partnership;

"Property" shall mean the property located off Pettingill Road, in the Town of Londonderry, New Hampshire, that serves primarily as a sand and gravel mining operation, including the following land parcels (as represented on Town of Londonderry Tax Assessment Maps): 14-34-0; 14-35-0; 14-36-0; 14-45-0; 14-45-2; 14-46-0; 28-17-0; 28-17-3; 28-17-4; 28-18-3; 28-18-5; and 28-18-7 (collectively, the "Property");

"Settling Parties" shall mean Defendants Hudson Sand and Gravel, Inc., Ballinger Properties, L.L.C., Five N Associates, and TANA Properties Limited Partnership;

"Section" shall mean a portion of this Decree identified by a roman numeral;

"United States" shall mean the United States of America, acting on behalf of EPA and

the Corps.

VI. CIVIL PENALTY

6. Within thirty days of the Effective Date of this Decree, the Settling Parties shall pay a civil penalty of Two Hundred Fifty Thousand dollars (\$250,000). The Settling Parties shall make payment by electronic funds transfer, in accordance with written instructions to be provided by the United States Attorney's Office, Financial Litigation Unit, Concord, New Hampshire. The Settling Parties shall make payment by FedWire Electronic Funds Transfer ("EFT") in accordance with current EFT procedures, referencing USAO File Number 2007Z00054, EPA Region I, and DOJ Case Number 90-5-1-1-08363. The costs of such electronic funds transfer shall be the responsibility of the Settling Parties. A copy of the electronic funds transfer authorization form, the electronic funds transfer transaction record, and any transmittal letter shall be sent to the United States and EPA in the manner specified in Section XIV.

7. If the Settling Parties fail to tender payment within thirty (30) days of the Effective Date of this Consent Decree, then Interest shall accrue on the debt to the United States, from the date of entry of this Consent Decree. The penalty specified in this Paragraph shall represent civil penalties and shall not be deductible for purposes of Federal taxes.

VII. COMPLIANCE MEASURES

8. Tributary Restoration Plan. The Settling Parties shall implement the restoration plan for the tributary to Little Cohas Brook (the "Tributary") as described in the Plan of Work, Map 14-45-2, Pettingill Road, Londonderry, N.H. by John O'Neil, L.L.C. dated September 12, 2006, as revised through April 3, 2007, and in the document titled Narrative Supplement to Plan of Work, dated April 4, 2007, both attached hereto as Appendix A (the

"Tributary Restoration Plan"). The Settling Parties shall implement such restoration plan according to the schedule and requirements contained therein.

9. Wetlands and Watercourse Delineation. Except for the areas subject to the "Tributary Restoration Plan," the Settling Parties shall delineate the federal wetlands and watercourses on the Property. The delineation shall be conducted in accordance with the On-Line version of the 1987 United States Army Corps of Engineers Wetland Delineation Manual, including the guidance and memoranda cited therein, the Regional Interpretation of the 1987 Wetlands Delineation Manual, attached hereto and made a part hereof as Exhibit B, and best professional judgment. The delineation shall be of existing federal wetlands and watercourses and any filled federal wetlands and watercourses. The Settling Parties may use leaf-off aerial photography and existing historic and current topographical mapping to delineate the federal watercourses on the Property (but not any wetlands), as long as such mapping is field checked for accuracy, at least at the upstream and downstream ends and every 500 feet along the length of each watercourse. The Settling Parties may consult aerial photography and existing historic and current topographical mapping in their wetlands delineation.

10. The Settling Parties may proceed with the delineation using consultants Mr. Mark West for the delineation of filled wetlands and watercourses on the Property and Mr. Gary C. Flaherty for all other wetland and watercourse delineations. If the Settling Parties need to retain different or additional consultants to perform the wetland and watercourse delineation, the Settling Parties shall notify EPA in writing of the name, title, and qualifications of such consultants. Any proposed consultant must have experience in delineating federal wetlands and watercourses. Within twenty (20) days of receipt of all required information regarding the Settling Parties' proposed consultant, EPA will notify the Settling Parties in writing of its

approval or disapproval of such consultant. If EPA disapproves a consultant, the Settling Parties shall submit the name, title, and qualifications of an alternate proposed consultant.

11. The Settling Parties shall resume the delineation of existing federal wetlands and watercourses on the Property on or about May 1, 2007, and shall complete such delineation by May 31, 2007, weather permitting. The Settling Parties shall commence the delineation of all filled wetlands and watercourses on the Property on or about May 1, 2007, and shall complete the delineation by May 31, 2007, weather permitting. If ground conditions prevent the delineation of either the existing or filled wetlands and watercourses, the Settling Parties shall notify EPA and request approval of an extension of the completion date for the delineations. Unless otherwise notified in writing, the Settling Parties' consultant shall conduct its field delineation of all filled wetlands and watercourses accompanied by a representative from EPA. Settling Parties must provide notice to the EPA Wetlands Enforcement Officer at the address listed in Paragraph 56 fifteen (15) days in advance of the commencement date for delineation pursuant to this Paragraph.

12. By July 2, 2007, or any later date agreed to by the parties, the Settling Parties shall submit to EPA for approval a report describing the delineation (the "Delineation Report"). The Delineation Report shall include a detailed surveyed map of all delineated wetlands and watercourse ("Delineation Map"). The Delineation Report shall also include narrative text describing the Property and the wetlands and watercourses on the Property, the wetlands methodology employed, the rationale for the location of any test pits, findings of the delineation, maps showing the location of any test pits, field notes, data sheets, aerial photographs used in the delineation, and ground photographs of the wetland areas.

13. Without limiting any of the Settling Parties' statutory or regulatory obligations,

the Settling Parties shall obtain approval under the State of New Hampshire Programmatic General Permit or an individual federal permit from the Corps with respect to any proposed discharges into those federal wetlands and watercourses shown on the approved Delineation Map, to the extent necessary to comply with Section 404 of the Clean Water Act. In addition, after the restoration of the Tributary is complete, the Settling Parties shall not fill or alter the portion of the Tributary from the culvert running under the existing Pettingill Road upstream to the point of discharge from the large wetland area located to the east of the so-called haul road, which portion of the Tributary is more specifically labeled as "Limit of Restoration" on Appendix C, attached hereto. As this Consent Decree is binding upon the United States and the Settling Parties, the previous sentence shall not restrict third parties other than Settling Parties' successors or parties related to the Settling Parties, not a party to this Decree, from filing for an individual or general permit under Section 404 of the Act to fill or alter the portion of the Tributary referred to in the previous sentence.

14. The Settling Parties, in a letter accompanying the Delineation Report, shall notify EPA whether or not the Delineation Report indicates that any federal wetlands or watercourses have been filled, and shall identify any such filled areas and provide details after conducting diligent investigation regarding when and how such areas were filled. The Settling Parties may include a rationale for why the filling of any watercourse or wetland does not violate the Act. EPA shall then make a determination whether any federal watercourses or wetlands have been filled in violation of Section 404 of the Act.

15. If EPA determines that federal watercourses or wetlands have been filled in violation of Section 404 of the Act, the Settling Parties, within twenty (20) days of receipt of notice of such determination, shall consult with EPA regarding the restoration or filing of an

after-the-fact permit application for the filled area(s). Within sixty (60) days after such consultation or within ninety (90) days of receipt of such notice of determination from EPA, whichever is shorter, the Settling Parties shall then submit to EPA for approval either a plan to restore the filled watercourses or wetlands, including a schedule for completion, or an application to the Corps for an after-the-fact permit, or a combination of both, at the Settling Parties' discretion. Upon approval, the Settling Parties shall implement any such plan according to the approved schedule. The Settling Parties shall submit any after-the-fact permit application(s) to EPA and EPA will make a preliminary determination regarding whether such permit application is complete and accurate, although the Corps will make the final determination. If EPA believes such application is complete and accurate, EPA will forward the application to the Corps for processing. If such application is not complete or accurate, EPA will notify the Settling Parties of any deficiencies, and the Settling Parties shall resubmit such permit application to EPA within thirty (30) days of receiving notice of any deficiency from EPA. Any restoration or restoration plan submitted under this Paragraph or under Paragraph 17 shall comply with the General Guidelines for Wetland Restoration and Creation Projects, attached hereto as Appendix D, including, without limitation, post-implementation monitoring of the restoration to ensure its success. The Settling Parties may request approval from EPA to terminate any post-implementation monitoring of any restoration performed hereunder prior to the expiration of any monitoring period required by Appendix D.

16. The Settling Parties shall not be required to restore or file an after-the-fact permit application for any federal wetlands or watercourses that the Settling Parties can show by substantial evidence were completely filled by parties other than the Settling Parties prior to April 14, 1994 for parcels 14-45-0; 14-45-2; 14-46-0; 28-17-0; 28-17-3; 28-17-4; 28-18-3; 28-

18-5; and 28-18-7 ("Five-N/Ballinger Parcels"); and prior to April 20, 1995, for parcels 14-34-0; 14-35-0; 14-36-0 ("Tana Parcels"); nor shall the Settling Parties be required to file an after-the-fact permit application for or restore the area subject to the Tributary Restoration Plan, beyond the restoration required in such Plan. Whether Settling Parties have established that wetlands or watercourses were completely filled by parties other than Settling Parties as stated above is within the sole discretion of EPA, and is not subject to dispute resolution pursuant to Section XII. Settling Parties Ballinger Properties, L.L.C., and Five N Associates represent that they were not formed until April 1994 and that they own the Five N/Ballinger Parcels, and Settling Party TANA Properties Limited Partnership represents that it was not formed until April 1995 and that it owns the Tana Parcels.

17. If the Settling Parties filled any federal wetlands or watercourses on the Property prior to August 1, 2006, the United States covenants not to sue the Settling Parties for civil judicial claims under Sections 301 and 404 of the Act for such filling. Such covenant will only become effective upon either (i) the Settling Parties' satisfactory completion of the restoration of the filled wetlands and/or watercourses according to an EPA approved restoration plan pursuant to Paragraph 15 of this Decree, or (ii) if the Settling Parties apply for and are issued an after-the-fact permit, upon the Settling Parties' complete compliance with all of the conditions of the permit, including any compensatory mitigation, or (iii) if the permit contains no conditions, upon the issuance of the permit. As to any unauthorized filling for which the Corps denies after-the-fact permit authorization, the Settling Parties shall remove such unauthorized fill and restore the affected area(s). In such a case, within thirty (30) days after receipt of the Corps' denial of an after-the-fact permit, the Settling Parties shall submit to EPA for approval a plan and schedule for the removal of the fill and the restoration of the filled area. Upon approval by EPA, the

Settling Parties shall implement such plan according to the approved schedule. The covenant described above in this Paragraph shall become effective with respect to particular wetlands or watercourses when the Settling Parties comply with the enumerated conditions set forth above in this Paragraph for such wetlands or watercourses. The Settling Parties reserve the right to appeal any after-the-fact permit conditions, and to appeal any denial of after-the-fact permit authorization; any covenant shall not vest with respect to the particular wetland or watercourse at issue until the appeal is resolved and the Settling Parties have complied with the conditions set forth above in this Paragraph. The Settling Parties shall appeal any after-the-fact permit conditions or any denial of an after-the-fact permit application within the time period established by the Corps' regulations regarding permit appeals as set forth in 33 C.F.R. Part 331, as amended, and shall appeal any final agency action of the Corps regarding such after-the-fact permit within 90 days of the Corps' final agency action. The covenant not to sue is further conditioned upon the satisfactory performance by Settling Parties of their obligations under this Consent Decree.

18. The Settling Parties shall also achieve and thereafter maintain compliance with the State of New Hampshire wetlands regulations contained in Wt 100-800, as amended.

19. Stormwater-Related Obligations. By the date of lodging of this Decree, the Settling Parties shall, with respect to the Property, achieve and thereafter maintain compliance with the NPDES Storm Water Multi-Sector General Permit for Industrial Activities, which appears at 65 Fed. Reg. 64801 (October 30, 2000) ("MSGP-2000"), and any subsequently issued permit, including without limitation, completing the stabilization of the drainage area for Point Source Discharge Area #5, selecting, installing, and maintaining effective best management practices ("BMPs"), and conducting comprehensive site evaluations, visual monitoring,

analytical benchmark monitoring, and inspections. Such obligation shall also include achieving and maintaining compliance with a Storm Water Pollution Prevention Plan or Plans ("SWPPP") developed for the Property, which must comply fully with the MSGP-2000 and any subsequently issued permit. Settling Parties shall submit such SWPPP(s) to EPA for review and approval within forty-five (45) days after the date of lodging of this Consent Decree. Such SWPPPs shall, without limitation, implement the requirements set forth in Appendix E attached hereto.

20. The Settling Parties shall amend any SWPPPs and modify any BMPs and control measures for the Property whenever required by the MSGP-2000 or any subsequently issued permit and also when:

- i. there is a change in conditions, design, construction, operation or maintenance at the Property that has or could have an appreciable effect on the discharge of pollutants to waters of the United States and that has not been previously addressed in the SWPPP; or
- ii. upon conducting an inspection or if the Settling Parties know or should have known that a BMP, or a combination of the BMPs is ineffective in eliminating or significantly minimizing pollutants in stormwater and non-stormwater discharges and run-off from the Property. Such obligation to modify BMPs and control measures shall occur within the time frames specified in Section 4.3 of the MSGP 2000; or
- iii. there is a change in or update of the information required in the SWPPP.

21. The Settling Parties shall conduct monthly benchmark analytical monitoring each month for the months of April, May and June of 2007 for each outfall or discharge location.

Such monthly monitoring shall continue for each month through and including December 2007, unless the Settling Parties can show, for any individual outfall or discharge, either (1) that the monitoring results of that outfall or discharge location were below the applicable benchmark for three consecutive months, or (ii) that there has been a rainfall of at least 1.75 inches in a twenty-four hour period in any month and that there was no discharge from such rainfall from an individual outfall or discharge location. Where the Settling Parties can demonstrate that either condition (i) or (ii) in the preceding sentence is satisfied, that outfall or discharge location shall be sampled on a quarterly basis thereafter. Such monthly and quarterly monitoring shall be conducted in the manner specified by the provisions of the MSGP-2000 applicable to benchmark monitoring, until the provisions applicable to benchmark monitoring of the next Multi-Sector General Permit for Industrial Activities ("MSGP") that EPA issues become effective. As required by Section 6.J.5 of the MSGP-2000, any future clearing, grading, and excavation activities associated with exploration and construction that disturb one or more acres, shall achieve and maintain compliance with the Construction General Permit-2003; provided, however, that if the Settling Parties obtain coverage under the next MSGP, as described below, the Settling Parties shall comply instead with applicable conditions in the next MSGP pertaining to exploration and construction phase activities.

22. When EPA issues the next MSGP, the Settling Parties, if eligible for such MSGP, shall achieve and thereafter maintain compliance with the provisions of that MSGP as it applies to the Property. If the Settling Parties are ineligible for the next MSGP, the Settling Parties shall file an individual NPDES permit application.

23. The Settling Parties shall achieve and thereafter maintain compliance with the

requirements of the State of New Hampshire Alteration of Terrain program, as amended, and any permits issued to the Settling Parties under such program. Within ninety (90) days of entry of the Decree, the Settling Parties shall file revised plans to reflect modified site conditions under their existing Alteration of Terrain permit or seek a new permit from the State of New Hampshire for the Settling Parties' current plans.

VIII. REPORTING OBLIGATIONS

24. The Settling Parties shall submit one copy to EPA, Region I (directed to the Remedial Project Manager for this Property), in the manner specified in Section XIV, within forty-five (45) days of completion of the respective reports or documents, copies of the following documents or reports for the Property:

- i. copies of any SWPPP or SWPPPs;
- ii. copies of any revision, modification, or amendment to a SWPPP;
- iii. copies of any inspection reports performed by any entity other than the United States, including, without limitation, reports of routine inspections or inspections of BMPs;
- iv. copies of reports of any monitoring, including, without limitation, visual monitoring, and analytical monitoring and benchmark monitoring; and
- v. copies of any reports of Comprehensive Site Evaluations.

25. Upon receiving written notice from EPA identifying any deficiencies in the documents submitted in accordance with Paragraph 24, in the implementation of any SWPPP, and any non-compliance with any permit obtained pursuant to the Act or its implementing

regulations, the Settling Parties shall make appropriate revisions to correct deficiencies within thirty (30) days of receipt of notice of deficiencies or such other time as the Parties agree to in writing. If the deficiencies are not cured, the Settling Parties will be subject to stipulated penalties pursuant to Section X. Failure to act by EPA is not a defense to any of the Settling Defendants' obligations required under this Decree.

26. The obligations under Paragraphs 24 and 25 shall commence upon lodging of the Decree and shall terminate two (2) years after entry of the Decree, except if the Settling Parties have not yet cured any deficiencies to the satisfaction of EPA that EPA has identified to the Settling Parties pursuant to Paragraph 25. If EPA has identified any such deficiencies, the obligations of Paragraphs 24 and 25 shall terminate upon the Settling Parties resolution of such deficiencies to EPA's satisfaction. Termination of the Settling Parties' obligations under Paragraph 24 and 25 shall have no effect on the Settling Parties' obligation to comply with all other requirements of this Decree and all applicable statutory and regulatory requirements.

27. The reporting requirements in this Section do not relieve the Settling Parties of their obligation to submit any other reports or information required by the Act, or by the regulations promulgated thereunder including, but not limited to, the reporting requirements set forth in the MSGP, as reissued, or by any applicable state or local requirements.

28. Any information provided under the reporting requirements of this Consent Decree may be used by the United States as an admission of the Settling Parties in any proceeding to enforce the provisions of this Consent Decree or the Act.

IX. REVIEW AND APPROVAL

29. After review of any plan, report or other item that is required to be submitted for

approval by EPA pursuant to this Consent Decree, except for any plan, report or other item submitted pursuant to Paragraph 24, EPA shall in writing: (i) approve, in whole or in part, the submission; (ii) approve, in whole or in part, the submission upon specified conditions; (iii) modify, in whole or in part, the submission to cure the deficiencies; (iv) disapprove, in whole or in part, the submission, directing that the Settling Parties modify the submission; or (v) any combination of the above.

30. In the event of approval, approval upon conditions, and/or modification by EPA, pursuant to Paragraph 29, the plan, report, or other item, or portion thereof, as approved, approved with conditions, and/or modified by EPA shall be enforceable under this Consent Decree, and the Settling Parties shall implement such plan, report, or other item, or portion thereof, in accordance with the approval, approval with conditions, and/or modification issued by EPA.

31. Upon receipt of a written notice of disapproval pursuant to Paragraph 29, the Settling Parties shall, within thirty (30) days or such other time as the Parties agree in writing, correct the deficiencies and resubmit the plan, report, or other item, or portion thereof, for approval.

32. Any resubmitted plan, report, or other item, or portion thereof, shall be subject to EPA's review and approval as provided under this Section. If the Settling Parties fail to resubmit a plan, report, or other item, or portion thereof after a disapproval, or if, upon resubmission, the plan, report, or other item, or portion thereof, is disapproved or modified by EPA, the Settling Parties shall be deemed to have failed to submit such plan, report, or other item, or portion thereof, timely and adequately, unless the Settling Parties invoke the Dispute

Resolution procedures set forth in Section XII and EPA's action is overturned.

33. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 29, the Settling Parties shall proceed, at the direction of EPA, as appropriate, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve the Settling Parties of any liability for Stipulated Penalties under Section X (Stipulated Penalties) for the deficient portions.

X. STIPULATED PENALTIES

34. The Settling Parties shall pay upon written demand by EPA stipulated penalties to the United States for violations of this Consent Decree, as set forth below:

a. For failure to submit the Civil Penalty pursuant to the terms of Paragraph 6, the Settling Parties shall pay stipulated penalties in the following amounts for each day during which the payment is not received:

Period of Failure <u>To Comply</u>	Penalty Per Violation <u>Per Day</u>
1st through 30th day	\$1,000
31st and beyond	\$2,000

b. For failure to comply with any other requirement of this Consent Decree, including but not limited to the following:

- i. implementing the Tributary Restoration Plan pursuant to Paragraph 8;
- ii. delineating the federal wetlands and watercourses on the Property pursuant to Paragraphs 9-11;

- iii. submitting the Delineation Report pursuant to Paragraph 12;
- iv. obtaining approval under the State of New Hampshire Programmatic General Permit or an individual federal permit from the Corps with respect to any proposed discharges into those federal wetlands and watercourses shown on the approved Delineation Map, to the extent necessary to comply with Section 404 of the Clean Water Act, pursuant to Paragraph 13;
- v. notifying EPA of filled wetlands or watercourses if the Delineation Report indicates that any federal wetlands or watercourses have been filled, pursuant to Paragraph 14;
- vi. submitting for approval a plan to restore any filled wetlands or watercourses, an application for an after-the-fact permit, or a combination of both, pursuant to Paragraph 15;
- vii. implementing any approved plan to restore filled wetlands or watercourses;
- viii. achieving and maintaining compliance with the MSGP-2000 and any subsequent issued permit and any SWPPPs under Paragraph 19;
- ix. amending SWPPP(s) under Paragraph 20;
- x. conducting the benchmark monitoring required by Paragraph 21; and
- xi. submitting reports or other information as required by Section VIII

Settling Parties shall pay Stipulated Penalties for each failure as follows: One thousand five

hundred dollars (\$1,500) per violation per day that Settling Parties fail to comply with any of the requirements set forth in this Decree, except that Settling Parties shall pay five hundred dollars (\$500) per violation per day for each day by which Settling Parties are late in mailing any report or document required by Paragraph 24.

35. All stipulated penalties begin to accrue on the day that complete performance is due or a violation occurs, and continue to accrue through, and including, the day on which such violation or other noncompliance is remedied. Penalties shall accrue regardless of whether EPA has notified the Settling Defendants of a violation. Stipulated penalties shall be due and payable within thirty (30) days of Settling Parties' receipt from EPA of a written demand for payment unless the Settling Parties invoke the Dispute Resolution procedures as set forth in Section XII, in which case payment shall be stayed only for those stipulated penalties Defendants are disputing as provided in Paragraph 39, except that dispute resolution shall not apply to the payment of stipulated penalties for the failure to pay the civil penalty pursuant to Paragraph 6. Nothing herein shall preclude the simultaneous accrual of separate stipulated penalties for separate violations of this Consent Decree.

36. In the event that a civil or stipulated penalty is not paid when due upon written demand, the penalty shall be payable with Interest from the original due date to the date of payment, plus one percent (1%), and plus the amount of the United States' reasonable costs, attorneys' fees or other expenses incurred in seeking payment of the civil or stipulated penalty. Settling Parties shall not deduct Stipulated Penalties paid under this Section in calculating its federal income tax.

37. Stipulated penalties paid to the United States under this Section shall be paid by

certified check payable to the "Treasurer of the United States," and tendered to the United States Attorney for the District of New Hampshire, with a copy of the check, the letter tendering such check, together with a transmittal letter identifying the action, describing the basis for the penalties and referencing USAO File Number 2007Z00054 and DOJ number 90-5-1-1-08363. A copy of the transmittal letter shall be sent to the United States in the manner specified in Section XIV.

38. Nothing in this Section shall be construed as prohibiting, altering, or in any way limiting the rights of the United States to seek additional remedies or sanctions, pursuant to other provisions of this Consent Decree or of any applicable statutes and regulations, including seeking injunctive or other relief for Settling Parties' failure to implement the injunctive relief provisions as agreed to in this Consent Decree.

39. Whether or not a stipulated penalty is due may be the subject of dispute resolution, except that the payment of stipulated penalties for failure to pay the civil penalty pursuant to Paragraph 6 may not be subject to dispute resolution. The Settling Parties shall so notify EPA within ten (10) days after receipt of written penalty demand by EPA, of its decision to invoke dispute resolution and their position, which shall constitute notice under Paragraph 48. Thereafter, the provisions of Section XII shall apply. Stipulated Penalties shall continue to accrue as provided in Paragraph 35 during any Dispute Resolution, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, Settling Parties shall pay accrued penalties determined to be owing, together with Interest, to the United States within thirty (30) days of the effective date of the

agreement or the receipt of EPA's decision or order.

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, Settling Parties shall pay all accrued penalties determined by the Court to be owing, together with Interest, within sixty (60) days of receiving the Court's decision or order, except as provided in Subparagraph c, below.

c. If any Party appeals the District Court's decision, Settling Parties shall pay all accrued penalties determined to be owing, together with Interest, within fifteen (15) days of receiving the final appellate court decision.

40. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive in writing any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XI. FORCE MAJEURE

41. "Force Majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Parties, including their consultants, contractors, and subcontractors, and any other entities controlled by the Settling Parties, that delays or prevents the timely performance of any obligation under this Consent Decree notwithstanding the Settling Parties' best efforts to avoid the delay. Stipulated penalties shall not be due for the number of days of noncompliance caused by a Force Majeure event as defined in this Paragraph, provided that the Settling Parties comply with the terms of this Section. Examples of events that may constitute Force Majeure events include natural disasters, national emergencies, and delays in obtaining any required approvals or permits despite the Settling Parties' complete and timely submission of requests for approval and applications for required

permits and any supplemental information that may be requested. Examples of events that are not Force Majeure events include, but are not limited to, Settling Parties' financial inability to perform any obligation under this Decree, unanticipated or increased costs or expenses of work, acts or omissions attributable to the Settling Parties' contractors or representatives, normal inclement weather, and the failure of the Settling Parties or the Settling Parties' contractors or representatives to make complete and timely application of any required approval or permit.

42. If any event occurs that may delay or prevent the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, the Settling Parties shall notify EPA orally or via fax within seventy-two (72) hours after the Settling Parties first knew or should have known that the event might cause a delay. Within five (5) working days thereafter, the Settling Parties shall provide to the United States, in the manner specified in Section XIV, a written explanation of the cause(s) of any actual or expected delay or noncompliance, the anticipated duration of any delay, the measure(s) taken and to be taken by the Settling Parties to prevent or minimize the delay, a proposed schedule for the implementation of such measures, and a statement as to whether, in the opinion of the Settling Parties, such event may cause or contribute to an endangerment to public health, welfare, or the environment. Notwithstanding the foregoing, the Settling Parties shall notify EPA orally or via fax within two hours of becoming aware of any event which presents an imminent threat to the public health or welfare or the environment and provide written notice to EPA within twenty-four (24) hours. Failure to give timely and complete notice in accordance with this Paragraph shall constitute a waiver of any claim of Force Majeure with respect to the event in question.

43. If EPA agrees that a delay or anticipated delay is attributable to Force Majeure,

the parties shall stipulate in writing to an extension of time for the performance of the affected requirements of this Consent Decree, not to exceed the amount of time lost due to the actual unavoidable delay resulting from such circumstances. Stipulated penalties shall not be due for the number of days of noncompliance caused by such circumstances.

44. If the parties are unable to agree whether the Settling Parties' failure to comply with a provision of this Consent Decree is attributable to Force Majeure, or on the number of days of noncompliance that were caused by a Force Majeure event, the matter shall be subject to Dispute Resolution. The Settling Parties shall notify EPA of its request to invoke dispute resolution within ten (10) days of receipt of written notice from EPA that it disagrees with the Settling Parties' position either (i) that a delay is attributable to Force Majeure, or (ii) as to the number of days of non compliance caused by Force Majeure. Such notice shall constitute the notice required under Paragraph 48. Thereafter, the provisions of Section XII (Dispute Resolution) shall apply. If the Court then determines that the failure to comply was caused by circumstances beyond the control of the Settling Parties and any entity controlled by the Settling Parties, including the Settling Parties' consultants, contractors and subcontractors, and it is determined that the Settling Parties or any entity controlled by the Settling Parties could not have foreseen and prevented such noncompliance, the Settling Parties shall be excused as to the failure to comply for the period of time the noncompliance continued due to such circumstances, and no stipulated penalties shall apply.

45. In any such determination to be made by the Court pursuant to Paragraph 44, the Settling Parties shall bear the burden of proving: (i) that the noncompliance was caused by circumstances beyond the control of the Settling Parties and any entity controlled by the Settling

Parties, including its consultants, contractors and subcontractors; (ii) that the Settling Parties or any entity controlled by the Settling Parties could not have foreseen and prevented such violation; and (iii) the number of days of noncompliance that were caused by such circumstances. If the Settling Parties fail to sustain their burden of proof under this Paragraph, stipulated penalties shall be paid for each day of noncompliance beginning with the first day of such noncompliance including interest at the rate provided for in 28 U.S.C. § 1961 from the date that the stipulated penalties were originally due. The time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event shall be extended by mutual agreement of the Parties for a period of time as may be necessary to allow performance of such obligations to the extent the delay was caused by a Force Majeure event.

46. Compliance with any requirement of this Consent Decree by itself shall not constitute compliance with any other requirement. The Settling Parties must make an individual showing of proof regarding each requirement for which an extension is sought.

XII. DISPUTE RESOLUTION

47. Unless otherwise expressly provided for in this Consent Decree, the Dispute Resolution procedures set forth in this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Settling Parties' failure to seek resolution of a dispute under this Section shall preclude Settling Parties from raising any such issue as a defense to an action by the United States to enforce any obligation of Settling Parties arising under this Decree. The pendency of any negotiations or petitions under this Section shall not operate as a stay of any obligation of this Decree, except by consent.

48. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under

this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Settling Parties send the United States a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) days from the date the dispute arises, unless that period is extended by agreement of the Parties. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within twenty (20) days after the conclusion of the informal negotiation period, Settling Parties invoke formal dispute resolution procedures as set forth below.

49. Formal Dispute Resolution. Settling Parties shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting Settling Parties' position and any supporting documentation relied upon by Settling Parties.

50. The United States shall serve its Statement of Position within forty-five (45) days of receipt of Settling Parties' Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. The United States' Statement of Position shall be binding on Settling Parties, unless Settling Parties file a motion for judicial review of the dispute in accordance with the following Paragraph.

51. Settling Parties may seek judicial review of the dispute by filing with the Court

and serving on the United States, in accordance with Section XIV of this Consent Decree (Notices), a motion requesting judicial resolution of the dispute. The motion must be filed within fifteen (15) days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of Settling Parties' position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

52. The United States shall respond to Settling Parties' motion within the time period allowed by the Local Rules of this Court. Settling Parties may file a reply memorandum, to the extent permitted by the Local Rules.

53. In any dispute brought under Paragraph 51, Settling Parties shall bear the burden of demonstrating that its position clearly complies with and furthers the objectives of this Consent Decree and the Clean Water Act. In all disputes under this Section, the Settling Parties shall have the burden of proving, based upon the administrative record, that the United States' position is arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law. EPA shall maintain the administrative record of the dispute, which shall contain all statements of the Parties, including supporting documentation, submitted pursuant to this Section.

54. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of Settling Parties under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties with respect to the disputed matter shall continue to accrue from the first day of noncompliance,

but payment shall be stayed pending resolution of the dispute as provided in Paragraph 39, above. If Settling Parties do not prevail on the disputed issue, Stipulated Penalties shall be assessed and paid as provided in Section X (Stipulated Penalties).

XIII. RIGHT OF ENTRY

55. Until termination of this Decree, EPA and its contractors, subcontractors, consultants, and attorneys shall have authority to enter the Property, at all reasonable times, upon proper identification, for the purposes of monitoring the progress of activity required by this Consent Decree, verifying any data or information submitted to EPA under this Consent Decree, assessing the Settling Parties' compliance with this Consent Decree, taking samples, and taking splits of samples collected by the Settling Parties or its consultants. If the Property is unoccupied by a representative of the Settling Parties when EPA exercises its access rights hereunder, EPA will make one telephone call to a representative of any of the Settling Parties (listed in Paragraph 56) prior to accessing the Property. This requirement is in addition to, and not in limitation of, EPA's access authority and right to seek imposition of a civil penalty and stipulated penalties pursuant to the Act, this Decree, or any other provision of state or federal law.

XIV. FORM OF NOTICE

56. Submissions required by this Consent Decree to be made to the United States or an agency thereof shall be made in writing to the following respective addressees, unless written notice is given that another individual has been designated to receive the submissions:

As to the Department of Justice

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
United Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
D.J. # 90-5-1-1-08363

As to the United States Attorney

United States Attorney
District of New Hampshire
55 Pleasant Street, Room 312
Concord, NH 03301-3904
Attention: David Plourde

As to the EPA

Richard Fisher
Remedial Project Manager
Office of Site Remediation and Restoration
U.S. Environmental Protection Agency, Region I
One Congress Street, Suite 1100 – Mail Code HBO
Boston, Massachusetts 02114-2023
Telephone: 617-918-1721
Telecopy: 617-918-1809

and

Denise Leonard
Wetlands Enforcement Officer
U.S. Environmental Protection Agency, Region I
One Congress Street, Suite 1100 – Mail Code SEE

Boston, Massachusetts 02114-2023

Telephone: 617-918-1719

Telecopy: 617-918-1809

and

John Kilborn, Senior Enforcement Counsel

Office of Environmental Stewardship

U.S. Environmental Protection Agency, Region I

One Congress Street, Suite 1100 – Mail Code SES

Boston, Massachusetts 02114-2023

Telephone: 617-918-1893

Telecopy: 617-918-0893

Notice to the Settling Parties under this Consent Decree shall be made in writing to the following respective addressees, unless written notice is given that another individual has been designated to receive the submissions:

Hudson Sand & Gravel, Inc.

Q. Peter Nash, President

91 Amherst Street

Nashua, NH 03064

Ballinger Properties, L.L.C.

Samuel A. Tamposi, Jr., Managing Member

20 Trafalgar Square

Suite 602

Nashua, NH 03063

Five N Associates

Q. Peter Nash, Managing Partner

91 Amherst Street

Nashua, NH 03064

Tana Properties LP
c/o Q. Peter Nash, Managing Partner, Five N. Associates
91 Amherst Street
Nashua, NH 03064

and

Carolyn S. Kaplan, Esq.
Nixon Peabody LLP
100 Summer Street
Boston, Massachusetts 02110
Telephone: 617-345-1345
Telecopy: 617-345-1000

and

Peter N. Tamposi, Esq.
Nixon Peabody LLP
900 Elm Street
Manchester, NH 03101
Telephone: 603-628-4014
Telecopy: 603-628-4040

XV. CERTIFICATION

57. All written notices, reports or any other submissions required by this Consent

Decree shall contain the following certification by a representative in senior management of the

Settling Parties:

"I certify under penalty of law that this document and all
attachments were prepared under my direction or supervision in

accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

XVI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

58. This Consent Decree resolves the civil claims of the United States for the violations alleged in the Complaint filed in this action through the date of lodging. This Consent Decree also contains a covenant not to sue pursuant to Paragraph 17. This Consent Decree supersedes the Administrative Order issued by EPA on October 6, 2004, docket no. 05-02.

59. The United States reserves all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated in Paragraph 58. This Consent Decree shall not be construed to limit the rights of the United States to obtain penalties or injunctive relief under the Act or its implementing regulations, or under other federal laws, regulations, or permit conditions, except as expressly specified in Paragraph 58. The United States further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, Settling Parties' Property, whether related to the violations addressed in this Consent Decree or otherwise. This Consent Decree expressly does not limit any rights or remedies available to the United States for any criminal violation. This Consent Decree does not limit the standing of any person under Section 505 of the Clean Water Act to sue for any future violation of the Act not

addressed by this Decree.

60. This Consent Decree is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. Settling Parties are responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits; and Settling Parties' compliance with this Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits. The United States does not, by its consent to the entry of this Consent Decree, warrant or aver in any manner that Settling Parties' compliance with any aspect of this Consent Decree will result in compliance with provisions of the Act, 23 U.S.C. § 1251, et seq., or with any other provisions of federal, State, or local laws, regulations, or permits.

61. This Consent Decree does not limit or affect the rights of the Settling Parties or of the United States against any third parties, not party to this Consent Decree, nor does it limit the rights of third parties, not party to this Consent Decree, against Settling Parties, except as otherwise provided by law.

62. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

63. The Settling Parties neither admit nor deny any of the allegations of the Complaint; and nothing in this Consent Decree shall constitute or be construed as an admission of liability, fact or violation of law or regulation, or of any wrongdoing on the part of the Settling Parties.

XVII. COSTS

64. Each party shall bear its own costs and attorney's fees in this action. The Settling

Parties shall be responsible for all expenses incurred by the United States in collecting any outstanding penalties due under this Consent Decree and in enforcing the requirements of this Consent Decree, unless Settling Parties prevail before a court in any Dispute Resolution brought pursuant to Section XII. In no event shall the United States be responsible for any expenses, costs or attorney's fees incurred by the Settling Parties.

XVIII. EFFECTIVE DATE

65. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XIX. RETENTION OF JURISDICTION

66. The Court shall retain jurisdiction to modify and enforce the terms and conditions of this Consent Decree and to resolve disputes arising hereunder as may be necessary or appropriate for the construction or execution of this Consent Decree.

XX. MODIFICATION

67. Any material modification of this Consent Decree shall be by agreement of the parties and in writing and shall not take effect unless approved by the Court. Any non-material modification of this Consent Decree shall be by agreement of the parties and in writing and shall not take effect until filed with the Court.

XXI. TERMINATION

68. Either party may move the Court to terminate this Consent Decree when all penalties that the Settling Parties are obligated to pay under Paragraph 6 and Section X (Stipulated Penalties) of this Consent Decree have been paid in full and when the Settling Parties

have completed all of the requirements set out in this Consent Decree, except that the requirements set forth in Paragraphs 13, 18, 19, 20, 22, and 23 regarding ongoing compliance with state and federal wetlands and stormwater obligations shall not bar the Settling Parties from moving the Court to terminate this Consent Decree, as long as the Settling Parties complied with the requirements of such Paragraphs during the twelve months prior to and at the date the motion to terminate is filed.

XXII. APPENDICES

69. The following appendices are attached hereto and incorporated into this Consent Decree:

“Appendix A” is the Tributary Restoration Plan.

“Appendix B” is the Regional Interpretation of the 1987 Wetlands Delineation Manual.

“Appendix C” is a map showing a portion of the Tributary.

“Appendix D” is U.S. EPA, New England Region, Wetlands Program, General Guidelines for Wetland Restoration and Creation Projects.

“Appendix E” is a list of required revisions to the existing MSGP SWPPPs.

XXIII. WAIVER OF SERVICE OF SUMMONS AND COMPLAINT

70. The Settling Parties shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on its behalf with respect to all matters arising under or relating to this Consent Decree. The Settling Parties agree to accept service by mail and to waive the formal service requirements set forth in Rule 4 of the

Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XXIV. PUBLIC COMMENT

71. The Settling Parties consent to the entry of this Consent Decree without further notice. The United States consents to the entry of this Consent Decree subject to publication of notice of the decree in the Federal Register, pursuant to 28 C.F.R. § 50.7, and an opportunity to consider comments thereon.

72. If, for any reason, this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XXV. FINAL JUDGMENT

73. Entry of this Consent Decree constitutes Final Judgment under Rule 54 of the Federal Rules of Civil Procedure.

74. Headings in this Decree are provided for convenience only and shall not affect the substance of any provision.

75. This Decree is the final, complete, and exclusive agreement between the Parties. The Parties acknowledge that in entering this Decree they have not relied upon any promises, representations, agreements or understandings other than those expressly contained in this Decree.

SO ORDERED THIS __ DAY OF _____, 20__.

United States District Judge

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v.
Hudson Sand and Gravel, Inc., et al.

FOR THE UNITED STATES OF AMERICA

Date

ELLEN MAHAN
Deputy Section Chief
Environmental Enforcement Section

Date

PATRICIA A. MCKENNA
Senior Attorney
SCOTT D. BAUER
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

THOMAS P. COLANTUONO
United States Attorney
District of New Hampshire
U.S. Department of Justice
53 Pleasant Street
Concord, New Hampshire 03301

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of United States v. Hudson Sand and Gravel, Inc., et al.

FOR HUDSON SAND AND GRAVEL, INC.

Date: 4/18/07

Q. Peter Nash, President

FOR BALLINGER PROPERTIES

Date: _____

Samuel A. Tamposi, Manager

FOR FIVE N ASSOCIATES

Date: 4/18/07

Q. Peter Nash, Managing General Partner

FOR TANA PROPERTIES LIMITED PARTNERSHIP

Date:

4/18/07

Five N Associates, General Partner

Q. Peter Nash, Managing General Partner

Date:

Ballinger Properties, LLC

Samuel L. Tamposi, Jr., Manager

Agent Authorized to Accept Service on Behalf of the Settling Parties:

Peter N. Tamposi, Esq.

Nixon Peabody LLP

900 Elm Street

Manchester, New Hampshire 03101

Telephone: 603-628-4014